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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,561	10/11/2005	John Harra	JH-1 PCT	4393
Eugene Indyk 366 Rue Road Monroe Township, NJ 08831			EXAMINER NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	
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			01/14/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/552,561

**Applicant(s)**

HARRA, JOHN

**Examiner**

Frederick C. Nicolas

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date 4/2/2007.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Preliminary Amendment***

1. The preliminary amendment filed on 4/2/2007 has been entered.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 12-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

I- In claim 12, the phrases "soft serve food product" (lines 4, 6, and 8) appear to be double inclusions of the previously recited "soft serve food product" (line 3).

II- In claim 16, the phrase "soft serve food product" (line 2) appears to be double inclusions of the previously recited "soft serve food product" as recited in claim 12, line 3.

III- In claim 21, the phrases "soft serve food product" (lines 4, 7) appear to be double inclusions of the previously recited "soft serve food product" (line 3).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 12-30,33-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Curry et al. 5,030,465.

Curry et al. disclose a soft serve food product manufacturing, storage, and dispensing machine (col. 1, ll. 7-11), which comprises a source (21) of soft serve food product, a closed loop circulation system (as seen in Figure 2) adapted to receive soft serve food production from the source, the closed loop circulation system comprising an emulsification assembly (25,23,32) adapted to emulsify soft serve food product in the closed loop circulation system, a dispensing head (44) connected to the closed loop circulation system adapted to dispense soft serve food product from the closed loop circulation system, the emulsification assembly comprises at least one chamber containing a plurality of motor driven emulsification elements (100,74), a pump (30), a refrigerated compartment (10) enclosing the closed loop circulation system, a refrigerated compartment (10) enclosing the source of soft serve food product, the closed loop circulation system, and the dispensing head, a refrigeration unit (56), a clean in place system (col. 8, ll. 5-9), at least one mix head (23), the emulsification assembly comprises a plurality of emulsification chambers (23,32) connected in series, a freezing barrel (34), an unrefrigerated compartment enclosing the clean in place system (col. 8, ll. 5-9 and it is inherent that the compartment for the clean in place system will be unrefrigerated in as much as the applicant's claimed invention).

***Allowable Subject Matter***

6. Claims 31-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Curry et al. 5,151,288, Ahnell et al. 5,229,150 and Harra 7,290,682 disclose other types of soft serve food product machine.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Frederick C. Nicolas/  
Primary Examiner, Art Unit 3754